

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
RAFAEL DAFFON, AGUSTIN DIGNOS, JESUS OMBAO AND ALBERTO
PASAYLOON, ACCUSED, RAFAEL DAFFON, ACCUSED-APPELLANT.**

G.R. No. L-30707. March 28, 1980

Ponente: AQUINO, J.

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AQUINO, J.:

This is a case of robo con homicidio. At about one o'clock in the morning of May 5, 1967, an armed band successively robbed the neighboring houses of Hadji Mohammad Kasilen (Kasilin or Casilem), Hadji Adam Kasilen and Ali P. Tagwalan located on the same side of the national highway in Barrio Bincungan, Tagum, Davao del Norte.

Tagwalan was killed on the occasion of the robbery. It is the robbery in his house that is involved in this appeal. Ten persons were suspected as having taken part in that robbery but only the four accused, who were apprehended, were charged.

After trial, the lower court convicted Rafael Daffon, Agustin Dignos and Jesus Ombao of robbery in band with homicide and sentenced each of them to reclusion perpetua. It convicted Alberto Pasayloon as an accomplice and sentenced him to an indeterminate penalty of twelve years of prison mayor as minimum to twenty years of reclusion temporal as maximum.

All the four were ordered to pay solidarily to the heirs of Tagwalan six thousand pesos as indemnity and the sum of one thousand five hundred pesos as the value of the articles taken from his house. Only Daffon appealed from that decision. His complicity in that robbery is the sole issue in this appeal.

Kato Sanawe, the nephew of Tagwalan and a third-year college student, testified that at the time in question, he and his uncle's children were asleep in the second floor of Tagwalan's house which was between the houses of Adam and Mohammad. Sanawe was awakened by gunshots and the pounding on the door of Mohammad's house. Sanawe was fired upon when he peeped through the window. The bullet missed him.

He ran downstairs and he saw Tagwalan, armed with a shotgun going out of the house. Sanawe heard gunshots coming from the houses of the brothers Mohammad and Adam Kasilen. Then, he heard the pounding on the door of the house of Ali, the brother-in-law of Adam and Mohammad.

Sanawe ran upstairs. Three intruders followed him to the second floor, which was lighted by a kerosene lamp, and directed him to sit down. The intruders opened the trunks and aparador or cabinet for clothes and scattered the clothes.

Sanawe recognized the intruders as Daffon, Ombao and Dignos. Although Daffon's face was covered up to his mouth, Sanawe recognized him because Daffon was a longtime resident of Tagum and Sanawe had seen him frequently in that place and in Mohammad's house.

Daffon inquired from Sanawe where the money and fire-arm were kept. Ombao got Sanawe's ring. Dignos pointed his gun at Sanawe and told him not to move so that nothing would happen to him.

After the robbers left, Sanawe and the Constabulary officers found Ali's dead body at the back of Adam's house. Ali sustained an entrance gunshot wound in the fourth rib. The bullet exited in the lower portion of his chest or near his abdomen.

Ayag Dimasara, a twenty-two-year-old neighbor of Tagwalan and the Kasilen brothers, testified that after being awakened by the gunshots, he heard another gunshot coming from Adam's residence followed by the exclamation: "Patay ako" (340 tsn). When the commotion subsided, he went down and beamed his flashlight at the spot where he thought the said exclamation was uttered, and he found the dead body of Tagwalan. The spot was near a guyabano tree in the yard of Adam's house about eleven meters away from the place where the witness stood.

Minda Tagwalan, the wife of Ali, testified that the robbers took cash amounting to two hundred pesos, pieces of jewelry worth four hundred pesos and clothes valued at nine hundred pesos.

Daffon relied on an alibi which his counsel did not bother to discuss in his brief. Daffon (Paeng or Toto), 35, testified that he had been a resident of Tagum since 1950. He was a policeman of that town for four years. He denied having owned any firearm.

He admitted that he was acquainted with Mohammad Kasilen (Calang). He acted as a guard when Mohammad illegally cut logs. In May, 1967, he did not leave the poblacion of Tagum. He was asleep in his house when the robbery in Barrio Bincungan was perpetrated. He did not know Ombao, Dignos, and Pasayloon, his co-accused. He came to know them only when they were confined in jail.

He denied that he was seen by Sanawe, Mohammad and Maximo Sapilin at the scene of the crime. He was not investigated by the Tagum police in connection with the robbery. Constabulary Sergeant Francisco Piccio asked him about the robbery in Nangan but not about the robbery in Barrio Bincungan. He called attention to the fact that during the investigation made by the municipal judge, Sanawe said that he (Daffon) was not one of the robbers.

Daffon admitted that he was the chief security guard of the Boy Scouts Land Grant in Asuncion, Davao del Norte. As such, he was provided with a revolver and motorcycle. He was suspended because he failed to stop the smuggling of logs. He denied that he was a member of the motorcycle club but moments later he retracted that denial. He admitted that he used to go to Barrio Bincungan to investigate the smuggling of logs whenever he was ordered by his manager to do so. After his suspension, he engaged in the buy-and-sell of fish.

Daffon contends in this appeal that the testimonies of Kato Sanawe, Mohammad Kasilen and Maximo Sapilin should not be given any credence. That contention is not sustainable. Dignos, his co-accused implicated him in this case.

Accused Ombao executed on June 22, 1967 a statement before Detective Rodolfo Cainglet of the Davao City police. In that statement, he revealed that certain persons named Osting (Dignos), Pasayloon, Kidong, Libron and three others perpetrated a robbery in Barrio Bincungan. Ombao said that that robbery was planned in his house.

That statement of Ombao prompted Detective Cainglet to take the statement of Pasayloon on June 23, 1967. In that statement, Pasayloon mentioned the robbery in Barrio Bincungan committed by a group of six persons led by Ombao. Pasayloon operated the pumpboat which took the robbers from Davao City to Bincungan but he did not mention Daffon.

On June 24, 1967, Detective Cainglet took the statement of Dignos (Osting), 37, who reached second year high

school. In his lengthy statement, Dignos disclosed that he, together with Pasayloon and others and with Ombao as mastermind, perpetrated certain robberies in different places in Davao. Among those robberies was that committed at Barrio Bincungan where the loot amounted to two thousand pesos and an occupant of the house robbed was killed by Kidong.

On June 28, 1967, Patrolman Anatolio S. Gaviola took the statement of Dignos regarding the robbery in Bincungan. Dignos clarified that that robbery was perpetrated on May 5, 1967, that the mastermind was Ombao and that the group leader was Kidong. A man named Paeng suggested the robbery (Exh. J or X).

Constabulary Sergeant Doroteo Maguad took Dignos' statement on the following day, June 29. In that statement, Dignos reiterated that it was Paeng Daffon who suggested the robbery in Bincungan (Exh. A).

On July 7, 1967, an "information" for robbery in band with homicide was filed by an assistant fiscal in the municipal court against Daffon, Ombao, Dignos, Pasayloon, Libron, and five other persons. Two other cases for robbery in band were filed against the same accused. Daffon was arrested on July 8. He presented evidence at the second stage of the preliminary investigation. The municipal judge found a prima facie case against him and his co-accused, Ombao, Dignos and Pasayloon.

On December 5, 1967 the fiscal filed in the Court of First Instance of Davao an information for robbery in band with homicide against the four accused herein.

At the trial, Mohammad Kasilen and Maximo Sapilin (aside from Sanawe) identified Daffon as one of the robbers. Mohammad testified that Daffon was one of the two armed men who entered his house. Daffon was wearing a fatigue uniform and his face was covered below the nose. He knew Daffon because they were close friends. Daffon used to collect royalties from Mohammad in behalf of the Boy Scouts Land Grant in Asuncion, Davao.

Maximo Sapilin, a driver, a neighbor of the robbery victims and a cousin-in-law of the deceased Tagwalan, testified that he had known Daffon as a resident of Tagum for more than ten years. Daffon used to ride in his jeepney and they were both members of the Tagum motorcycle club.

On the night in question Sapilin was awakened by gun-shots. When he went down from his house, which was near Adam's house, someone held him in the arm and took him to Adam's house and he was told to lie down flat on the floor together with the helpers. He recognized the person who held him as Daffon although the latter's mouth was covered.

The only flaw in the identification of Daffon made by Sanawe, Mohammad and Sapilin is that they did not immediately denounce Daffon to the authorities. Mohammad declared that five days after the robbery he told Constabulary Sergeant Francisco Piccio that Daffon was a member of the band that perpetrated the robbery. Piccio confirmed that fact.

The said three eyewitnesses explained that they did not denounce Daffon right away because they were afraid that he would kill them. It may be surmised that the three eyewitnesses were at first not certain that Daffon was one of the robbers because his face was half-covered.

Aside from that circumstance, these witnesses, who knew that Daffon was a former policeman and chief security guard of the Boy Scouts Land Grant must have been surprised that such a person would turn out to be a hoodlum. Initially, they could not persuade themselves into believing that Daffon led a Doctor-Jekyll-and-Mr.-Hyde double life: in the day-time, Daffon was a fish vendor or presumably a law-abiding citizen but at night he was a malefactor.

We agree with the trial court that Daffon is guilty of robbery in band with homicide beyond reasonable doubt. The confessions of Dignos, Pasayloon and Ombao prove that the robbery was committed by a band (Exh. A, B and E).

The Solicitor General observes that nocturnity, dwelling, use of a motor vehicle (pumpboat) and disguise also aggravated the special complex crime. He recommends that, instead of reclusion perpetua, Daffon should be sentenced to death.

As a matter of strict law, Daffon should be sentenced to death. However, for lack of necessary votes, the death penalty cannot be imposed on Daffon.

It may be noted that two of his co-accused, who did not appeal, were sentenced to reclusion perpetua only. In *People vs. Sakam*, 61 Phil. 27, nineteen Moros were convicted of multiple murder. Seventeen were sentenced to reclusion perpetua while the other two, Sakam and Tantali, were sentenced to death. Upon automatic review of the death penalty imposed upon the two, this Court upheld the death sentence as to Sakam but imposed reclusion perpetua on Tantali because that was the penalty meted to his seventeen co-accused who did not appeal. Same holding in *People vs. John Doe*, L-2463, March 31, 1950.

WHEREFORE, the lower court's judgment as to Daffon is affirmed with the modification that the indemnity of six thousand pesos should be increased to twelve thousand pesos. Costs de officio.

SO ORDERED.

Fernando, C.J., Barrredo, Makasiar, Concepcion, Jr., Fernandez, Guerrero, Abad Santos, De Castro, and Melencio-Herrera, JJ., concur.

Teehankee and Antonio J., took no part.

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